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EM SSAB Members and the Federal Advisory Committee Act

**Cate Alexander
DFO EM SSAB**

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EM Environmental Management

safety ❖ performance ❖ cleanup ❖ closure



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EM SSAB members are among

- ~ 45,000 members of ~ 900 federal advisory committees
- How many DOE advisory boards?
- How many EM advisory boards?



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More Federal Advisory Board Trivia

- First federal government advisory board?
- Longest running federal advisory board?
- Agency with the greatest number of advisory committees?



WHO CARES?

- Congress
- Executive Branch (GSA, GAO, DOE)
- You!
- Why?
 - The integrity of advisory committees depends, in part, on the commitment of its members to operate within the law.



Presentation Overview

1. What is FACA—and why is it a law?
2. Practical Aspects of FACA:
 - Responsibilities and authority given DOE for the EM SSAB
3. What Members Need to Know.
4. HQ Views on EM SSAB



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Federal Advisory Committee Act

Public Law 92-463, effective January 5, 1973.
Requires the establishment of a Committee Management Secretariat to provide Government-wide oversight of advisory committees. In addition, the Act establishes a framework covering the creation, management, operation, and termination of all advisory committees reporting to the Executive Branch.



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Federal Advisory Committee Act was designed to fulfill two basic purposes:

1. To Enhance Public Accountability of Advisory Committees.

- To control the undue influence of special interests by balancing committee membership, and to ensure that public access to committee deliberations is maximized.



2. To Reduce Wasteful Expenditures on Advisory Committees.

- To improve the overall management of committee activities by establishing a set of management controls. These controls were designed to, among other objectives:
 - Monitor Federal advisory committee costs;
 - Identify and eliminate unproductive and/or unnecessary committees; and
 - Provide for an annual report of committee activities and accomplishments to the Congress.



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Federal Advisory Committee Act

- Ensures public input on government decisions
- Prevents domination by special interests
- Provides for open discussions of policy



Four sources of authority for establishing an advisory committee :

- **“(a) Required by statute.** By law where the Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (*non-discretionary*);
- **(b) Presidential authority.** By Executive order of the President or other Presidential directive (*non-discretionary*);
- **(c) Authorized by statute.** By law where the Congress authorizes, but does not direct the President or an agency to establish it (*discretionary*); or
- **(d) Agency authority.** By an agency under general authority in title 5 of the United States Code or under other general agency-authorizing statutes (*discretionary*).”



FACA Major Requirements

- Agencies must design uniform administrative guidance and management reports and controls
- Committees must be chartered (renewal 2 years)
- Meetings must be open to the public (w/exceptions) and allow public comment
- Detailed meeting minutes must be kept
- Committees will be terminated when
 - Stated objectives accomplished
 - Their work has become obsolete
 - Cost of operations is excessive in relation to benefits to Federal Government



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FACA Major Requirements

Advisory committee memberships are to be fairly balanced in terms of the points of view represented and the functions to be performed.



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FACA
41 CFR § 102-3

**Advisory Committee
Management Manual
(DOE M 515.1-1)**

**EM Site-Specific Advisory
Board Charter (2008)**

**EM Site-Specific Advisory Board
Guidance and SOPP**

Site By-laws and SOPP



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GSA Code of Federal Regulations

CFR 41 § 102-3

Fairly balanced membership. The agency plan to attain balanced membership ...will consider a cross-section of those directly affected, interested and qualified, as appropriate to the nature and functions of the advisory committee.



DOE Advisory Committee Management Manual

- Selections and appointment by Secretary and designees
- Individuals selected based on potential contributions to committee
- Members serve without compensation
- Membership must represent a fair balance of interests



DOE Manual and EM SSAB Guidance

- Affected people
- Statistics from the U.S. Census Bureau
- A range of interests, determined by identification with local and Tribal governments, community organizations, other organizations around specific interests



Other Membership Guidance

- Key communities [NRC, 2008, p. 194]
- GAO Report on FACA: Issues Related to the Independence and Balance of Advisory Committees (2004): Members should not be appointed as members purely on the basis of their expertise



Key Points for Balanced Membership

- Points of view for the function to be performed
- Numerical parity of holders of various points of view not required
- Separate from considerations of race, gender, geographic regions, etc.
- No individual or group has the right to be on a committee



Selection Process

- Site Recruitment through meetings, newspapers and other media, word-of-mouth, special events
- Sometimes input from board or independent group
- Nominations forwarded to DOE-EM HQ
- Reviewed by EM-42, Committee Management Office, Executive Secretariat, General Counsel, Assistant Secretary
- Appointment letters sent



Advisory Board Member Responsibilities

- To attend regular meetings and receive training;
- To review and comment on EM and other documents within their purview that come before the Board, and submit timely recommendations to EM;
- To work collaboratively and respectfully with other Board members and liaisons in the best interests of both the Board and the public;
- To serve on at least one Committee or Task Force during any given six month period as appointed by the Chair; and
- To abide by the terms and conditions of the EM SSAB Charter and these operating procedures



Advisory Board Member Responsibilities

Declare any potential conflict of interest.

DOE requires that members be recused from working on matters before the advisory committee in which they have a direct financial interest. Members cannot use their position on the Board for their private gain or for the private gain of others and cannot accept gifts given because of a member's position on the board. Employees of contractors do not have an inherent or inevitable conflict of interest that prohibits them from serving on the Board.



Advisory Board Member Responsibilities

- What to do if press calls
- Email exchange guidance
- Subcommittee, including executive committee, guidance
- What to do if a member is approached with entertainment and other offers from contractors or other special interests



DOE-EM Responsibilities

- Advisory committees must be adequately funded by the appropriate agency. [41 CFR 102-3.95(a)]
- Advisory committee members may be subject to ethics and conflict-of-interest statutes, regulations and other rules. [41 CFR 102-3.105(h); Appendix A-IV. to Subpart C; and 5 CFR 2634.903, .904 (OGE)]
- Agencies should practice openness and seek to be as inclusive as possible. [41 CFR 102-3.95(d)]
- Agencies should continually seek feedback from advisory committee members regarding effectiveness of advisory committee's activities; and should regularly communicate to members how their advice has affected Agency programs and decision-making. [41 CFR 102-3.95(e)]



HQ Views on the EM SSAB and Local Boards

- Advice is highly valued
- EM SSAB local boards are a hub for local site input
- The environment for stakeholder participation on site issues largely dependent on EM SSAB members
- Evaluation of effectiveness



HQ Views on the EM SSAB and Local Boards

- Importance of work plan for tracking and evaluation of accomplishments
- **Three General Charges from Assistant Secretary**
 - Budget Priorities
 - Waste Disposition Preferences
 - Improving Public Participation



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Cate Alexander

**Designated Federal Officer
Environmental Management Site-Specific
Advisory Board**

**1000 Independence Ave., SW
Washington, DC 20585**

Phone: (202) 586-7711

E-mail: catherine.alexander@em.doe.gov

EM SSAB Home page:

<http://www.em.doe.gov/Pages/ssab.aspx>